

# Safe third country concept in the EU pact on migration and asylum

## SUMMARY

The safe third country (STC) concept is well established in international asylum policies. According to the concept, certain migrants should not be granted protection in the country where they have applied for it. Instead, they may be returned, or transferred, to a country where they could have found, or can find, international protection. Amid ongoing EU-level discussions on safe third country rules, in 2018 the United Nations Refugee Agency developed legal considerations on safe third countries.

Within the framework of the body of EU law on asylum, the STC concept is based on the assumption that certain third (i.e. non-EU) countries can be designated as safe for applicants seeking international protection, under specific conditions. The concept builds on cooperation with third countries in a bid to reduce irregular arrivals and increase return rates. It seeks to speed up the processing of the claims of asylum applicants arriving from safe third countries, to prevent overburdening national asylum systems.

The recently adopted Asylum Procedure Regulation provides for broader applicability of safe country clauses. This concerns, in particular, four aspects: (i) the safety assessment when applying the STC concept; (ii) interpretation of the 'connection requirement', i.e. the connection between an asylum seeker and a third country, when readmitting an applicant to a designated STC; (iii) the option to designate a third country as safe with territorial limitations or to exclude certain vulnerable groups from such a designation; and (iv) the creation of a common EU list of STCs in addition to national lists.

The success of any STC scheme relies on third countries' cooperation, something that can be challenging to obtain. To counter criticisms of burden shifting and to boost the viability of STC schemes, the EU must demonstrate solidarity through burden sharing. Furthermore, many potentially safe third countries lack asylum laws and administrative frameworks. Consequently, they would likely require substantial support from external partners.



## IN THIS BRIEFING

- Introduction
- Main elements of the safe third country (STC) concept
- STC concept in the Asylum Procedure Regulation
- Outlook



## Introduction

Since the 2015 migration crisis, the EU has been looking at various forms of external cooperation that could potentially drive migration management outside the EU's external borders. In recent years, the 'externalisation' of migration management through cooperation with third countries included ideas such as [extraterritorial processing of asylum claims](#) and the possibility of the EU establishing processing centres in northern Africa or elsewhere. This was intended to help manage flows of asylum seekers and migrants travelling to Europe. However, [legal hurdles](#) prevented it from becoming a mainstream EU migration management tool.

The concept of safe third countries (STC) prevailed instead. According to the concept, certain applicants for international protection should not receive protection in a country in which they have sought it, because they could have obtained that protection in another country. The concept was introduced as early as the late 1980s, with the aim of promoting a fair sharing of responsibility for asylum applicants among members of the international community. In its original form, it allowed the states most affected by refugee flows to transfer asylum seekers to another country, provided the receiving state could offer protection that met international standards.

At EU level, the concept has gradually developed as part of the common European asylum system (CEAS). The definition of 'safe third country' for the EU is currently set out in Article 38 of [Directive 2013/32/EU](#) on common procedures for granting and withdrawing international protection. It is applied as a ground for declaring applications inadmissible and preventing applicants from a full examination of the merits of their claim. The concept has been reformed as part of the recently adopted pact on migration and asylum, specifically its [Regulation \(EU\) 2024/1348](#) establishing a common procedure for international protection in the Union (the Asylum Procedure Regulation), which will start to apply in mid-2026.

According to Article 77 of the Asylum Procedure Regulation, '[b]y 12 June 2025, the [European] Commission shall review the concept of STC and shall, where appropriate, propose any targeted amendments'. In addition, 15 Member States in a [letter](#) of 15 May 2024 called for the application of the concept of 'safe third countries' in EU asylum law to be reassessed. They urged the Commission to implement concrete and immediate measures, and to reassess the legal framework where needed during the STC concept planned 2025 review. The Commission is also encouraged to present a proposal on designating countries as safe third countries at the EU level, as outlined in the Asylum Procedure Regulation.

## Main elements of the safe third country (STC) concept

The concept has been [discussed extensively](#) in the literature. Experts have raised [concerns](#) about the STC concept's legality, arguing that the [Refugee Convention](#) does not offer a sufficient legal foundation for its application. Nevertheless, thus far, most debates have focused on determining the essential conditions a third country must meet to be considered safe under international refugee and human rights law.

In view of the ongoing discussions on the use of STC rules at the EU level, in 2018, the United Nations Refugee Agency (UNHCR) prepared [legal considerations](#) in the context of safe third countries.<sup>1</sup> According to the UNHCR, the STC concept has been used in situations where an individual could have found, or can find, protection in a third country. This may apply either to a specific case or under a formal bilateral or multilateral agreement between countries regarding the transfer of asylum seekers.

In this context, the UNHCR has highlighted two key issues to be addressed when returning individuals to safe third countries. Firstly, the importance of a connection between the refugee and the third country, and secondly, the need for the third country to ensure adequate access to and level of protection for it to be deemed safe.

Under international law, it is not mandatory to establish a connection between the refugee or asylum seeker and the third country. However, the UNHCR has consistently emphasised the importance of a 'meaningful link' or connection between an asylum seeker and a third country, making it reasonable and sustainable for the individual to seek asylum there. The UNHCR asserts that factors such as the length and nature of any previous stay, as well as connections through family or other close ties, are essential for enhancing the feasibility of return or transfer from the perspective of both the individual and the state.

As regards access to and level of protection, the UNHCR's legal considerations highlight that, to be deemed a STC, that country must provide asylum seekers with access to treatment standards that align with the 1951 Refugee Convention, its 1967 Protocol, and international human rights norms – particularly protection from *refoulement* and the legal right to seek employment. According to the UNHCR, ensuring that access to protection is both effective and enduring requires that the country be a party to the 1951 Convention and its 1967 Protocol, as well as fundamental human rights treaties, without any restrictions.

Before transferring an individual, it is essential, in accordance with relevant international law standards, to assess on a case-by-case basis whether the third country will:

- (re)admit the person;
- provide access to a fair and efficient procedure for determining refugee status and other international protection needs;
- allow the person to remain while the determination is made;
- ensure the person receives treatment in line with the 1951 Refugee Convention and international human rights standards, including, but not limited to, protection from *refoulement*;
- if the individual is recognised as a refugee, grant them lawful stay.

As [pointed out](#) by the UNHCR, in certain situations, refugees or asylum seekers have been transferred or relocated under bilateral or multilateral agreements without individual assessments. However, this requires the third country to have established objective protection standards, and to provide firm commitments that those returned will have access to protection, assistance and durable solutions in accordance with the guarantees mentioned above. Nevertheless, individual assessments prior to transfer are still essential for vulnerable groups, such as [unaccompanied and separated children](#).

## STC concept in the Asylum Procedure Regulation

Within the EU asylum acquis, the concept of an STC is based on the assumption that certain non-EU countries can be designated as safe for applicants seeking international protection, under specific conditions. The recently adopted [Asylum Procedure Regulation](#) provides for broader applicability of safe country clauses. This particularly concerns four aspects: (i) the evaluation of safety when applying the STC concept; (ii) the interpretation of the connection requirement for readmitting an applicant to a designated STC; (iii) the option to designate a third country as safe with territorial limitations or to exclude certain vulnerable groups from such designation; and (iv) the creation of a common EU list of STCs in addition to national lists.

### Admissibility procedure

Transfers to an STC under the Asylum Procedure Regulation are only permitted after an **admissibility procedure** has been conducted on European soil, including the possibility of legal remedies. The legal act specifies that asylum applications may be submitted within the territory, at the border, in territorial waters, or in transit zones. As a result, admissibility checks do not apply to individuals rescued at high sea and subsequently transferred to an STC. However, Members of the Council of Europe must comply with European Court of Human Rights (ECtHR) case law, according

to which the prohibition of *refoulement* is not limited to the territory of a state, but also applies to extraterritorial state action, including action occurring on the high seas.<sup>2</sup>

The first step of the admissibility procedure involves **classifying a third country as safe** at either the national or European level (EU lists will be made available under the new Asylum Procedure Regulation). In this process, state authorities must consult a range of relevant and available sources of information, including information from Member States, the EU Agency for Asylum, the European External Action Service, the UNHCR, the Council of Europe and other international organisations, to assess whether the third country meets the criteria outlined in EU legislation.

In the second step, asylum authorities must evaluate, on a **case-by-case basis**, whether the third country is truly safe for each transferee, and whether the other conditions outlined in EU law, including the connection criterion, are met. The authorities need to establish a rebuttable presumption of safety. An individual has a right to a personal interview<sup>3</sup> in order to explain the reasons why the country may not be considered safe for them. All procedural safeguards must be upheld, including access to legal counsel, interpretation services, qualified staff, free legal advice and a vulnerability assessment. The admissibility interview can only be waived in exceptional circumstances, such as when the determining authority considers that the application is not inadmissible based on the evidence available.

The regulation only allows an asylum application to be rejected as inadmissible if a STC **(re)admits** a person. If the transfer fails, a regular asylum procedure must be carried out in the EU. This is in line with the recent [judgment](#) by the Court of Justice of the European Union (ECJ). The Court ruled that Member States cannot issue a decision rejecting an asylum application as inadmissible in cases where they have established that the asylum seeker will not be admitted or readmitted to the territory of a country designated as safe. The decision on the existence or not of the possibility of readmission to the third country becomes part of the stage of issuing the decision on the asylum application and not of the stage of its execution. The Court accepted, however, that a country may be listed as an STC even if, despite its legal obligation, that third country has, in general and without any prospect of a contrary development, suspended the admission or readmission of those applicants to its territory.

Transfers are allowed only if 'there is a **connection** between the applicant and the third country in question on the basis of which it would be reasonable for him or her to go to that country'. The regulation therefore leaves it to the Member States to define the specific connection requirements in their national law. According to the recitals in the Asylum Procedure Regulation, the connection may be deemed established, particularly if the applicant's family members are present in that country, or if the applicant has previously settled or stayed there. Here, the ECJ judgment in [C-564/18](#) remains highly relevant, as it has interpreted the current Directive 2013/32/EU to mean that a short-term transit is not sufficient. According to [experts](#), the inclusion of the notion of 'stay' could, if interpreted loosely, potentially encourage Member States to consider passing through a country for a limited period as sufficient for the connection requirement to be met.

The Asylum Procedure Regulation allows Member States to **exclude specific groups** when designating a third country as generally safe. It also mandates a case-by-case evaluation to determine whether transferring unaccompanied minors is in the best interests of the child, taking into account the availability of protection in the third country. If the individual assessment determines that the child should not be transferred to a specific third country, a standard asylum procedure must be carried out in the EU.

## Legal remedies

The Asylum Procedure Regulation reduces the time limit for legal remedies to between 5 and 10 days. The transfer can only take place once the deadline for filing an appeal has passed or, if an appeal is lodged, once the competent court has granted approval. The applicant has therefore a provisional right to remain until the **final judgment at first instance**.

Asylum applicants covered by an STC arrangement may always be subject to **border procedures**, even if they come from a country with high statistical recognition rates. There is no automatic suspensive effect of appeals under the border procedure, except for cases of unaccompanied minors. A court can instead decide to grant suspensive effect to an appeal on the applicant's request or on the court's own motion, whereby it needs to consider facts and points of law. The actual transfer in the border procedure can then take place after that [interim order](#) for inadmissibility decisions.

A new provision in the Asylum Procedure Regulation stipulates that third countries are considered safe if the EU has concluded an **international treaty** with them providing that readmitted migrants will be protected in accordance with the relevant standards and the principle of *non-refoulement*. According to the clear wording of the regulation, this does not relieve domestic authorities and courts from conducting a case-by-case safety assessment, which includes legal remedies. Nevertheless, some [experts](#) argue that without rigorous assessment and monitoring of the respect of legal and procedural standards, these clauses could ultimately expose applicants to the risk of *refoulement*.

According to Professor [Daniel Thym](#), under the current Asylum Procedure Regulation, an STC scheme cannot be realised on a large scale. Future targeted amendments by the Commission could change this by:

- abandoning the connection criterion, which in any case is not mandatory under international law;
- authorising admissibility checks under EU control in third countries and/or simplifying procedural requirements during admissibility checks;
- switching to interim legal remedies in cases of appeals, as in the case of border procedure.

## Safety assessment of the third country

Any STC must fully respect the **prohibition of refoulement**. The prohibition of *refoulement* under the Refugee Convention and international human rights law mandated protection from (chain) *refoulement* in each case individually. It is not enough to label a country as generally safe if a risk of violations in specific instances remains. The prohibition of *refoulement* in [EU law](#) extends beyond the Refugee Convention, as it recognises that **persecution** or **serious harm** can originate from non-state actors and include gender-specific grounds. The Asylum Procedure Regulation clearly requires such comprehensive protection against *refoulement*, and against removal in violation of the right to protection from torture and cruel, inhuman or degrading treatment or punishment.<sup>4</sup>

Furthermore, the Asylum Procedure Regulation requires protection 'in accordance with' the Refugee Convention and international law, meaning no formal ratification of that convention is required. Instead, the third country must offer the possibility to request and, where conditions are fulfilled, to receive **effective protection**. Under this new framework, a country can be deemed an STC if, in addition to providing protection from persecution, serious harm, and *refoulement*, it ensures that the transferred individuals:

- are allowed to remain on the territory of the third country;
- have access to means of subsistence sufficient to maintain an adequate standard of living with regard to the overall situation of that hosting third country, including food, clothing, housing and the right to engage in gainful employment;
- have access to healthcare and essential treatment for illnesses under the conditions generally provided for in that third country;
- have access to education under the conditions generally provided for in that third country;
- benefit from effective protection until a durable solution can be found.

For some [experts](#), the above concept of effective protection represents 'an explicit departure of EU law from the 1951 Refugee Convention system', as it will explicitly permit Member States to apply the STC concept to certain non-signatories to the Refugee Convention. The concept also does not include a right to family reunification, as provided for in the initial Commission [proposal](#) for the Asylum Procedure Regulation. Furthermore, the provision regarding the 'possibility to request and, where conditions are fulfilled, receive effective protection' must be interpreted as necessitating, at a minimum, a legal and institutional framework for a functioning asylum system that is both formally and practically accessible, and of sufficient quality to carry out refugee status determination effectively.

Based on the Asylum Procedure Regulation, Member States and the EU may limit the designation of a third country as an STC to '**specific parts of its territory**'. For example, a country may be designated as safe, even if certain provinces are not under the control of the central government, or are deemed unsafe for other reasons. Furthermore, the regulation allows for applying the STC provision in individual cases, without the need to have previously classified the entire country or parts thereof as being generally safe. According to [Thym](#), in practice, this latter option could be applied in individual cases with regard to the safety of a specific city or reception centre.

## Safe third country lists

The Asylum Procedure Regulation sets out the possibility to establish an **EU-wide list** of third countries deemed safe. This is intended to ensure that Member States apply the concept in a uniform manner in relation to applicants for whom there is an STC. According to the Commission, this may facilitate convergence in the application of procedures and help deter secondary movements of applicants for international protection. However, the regulation retains the possibility for Member States to adopt their **own national lists** alongside an EU-wide one. The only situation in which Member States would be required to align their lists to the EU's is if a third country is suspended from the common EU list.

### Safe third country lists in EU Member States

Only five EU Member States have introduced national lists of safe third countries: Germany, Estonia, Ireland, Greece and Hungary. Three Member States apply the concept on a case-by-case basis, despite the absence of provisions on the designation of a national list: Belgium (only for applicants who previously resided in Norway and Switzerland), Latvia and Austria. Six Member States have not adopted a list of safe third countries, although a legal framework exists, and therefore apply the concept on a case-by-case basis: Denmark, Cyprus, Lithuania, Luxembourg, the Netherlands and Finland,

As regards exceptions for specific geographical areas, Estonia introduced an exception for Armenia (Nagorno-Karabakh), Bosnia and Herzegovina (Republika Srpska) and Georgia (Abkhazia and South Ossetia), while Hungary limits the STC concept to those states in the United States that do not apply the death penalty. Regarding specific categories of applicants, Greece designated Albania and North Macedonia as safe third countries for asylum applicants entering the Greek territory irregularly through their respective borders. In addition, it designated Türkiye as a safe third country only for applicants of international protection from Afghanistan, Bangladesh, Pakistan, Somalia and Syria.

If circumstances change and the country no longer meets the criteria to be considered safe, it could be **suspended** from the EU-wide list through a Commission delegated act or by an amendment under the ordinary legislative procedure. In the first case, Member States would be prohibited from adding that country to their national lists. In the case of suspension under the ordinary procedure, Member States could only include the country on their national lists if the Commission does not object; the Commission could exercise the right to object for a maximum of 2 years.

## Outlook

For any safe third country scheme to succeed, cooperation with third countries is key. Before any transfer of asylum seekers can take place, practical arrangements for implementing the transfer need to be agreed with the third country concerned. Current poor implementation of [readmission](#) and other migration agreements and arrangements suggests that convincing third countries to accept those rejected in the EU will not be easy. The complexities surrounding the [EU-Türkiye statement](#) and subsequent designation by [Greece](#) of Türkiye as an STC for some nationalities confirm this. Türkiye has not met the STC requirements, as evidenced by the ECtHR in Case [Akkad v Turkey](#), where Türkiye was found to be forcibly repatriating migrants to Syria despite the significant risks involved, and in [J. A. and A. A. v Turkey](#), where it was found violating migrants' right to life and exposing them to torture and inhuman and degrading treatment.

Although many potentially safe third countries have ratified the Refugee Convention, many lack asylum laws and/or strong administrative frameworks to carry out larger-scale status determination adequately. These countries would therefore probably need the support of international organisations, private actors, EU agencies or EU Member States. Questions also arise as to the fate of those individuals who do not have protection needs and must be returned to their countries of origin. Lastly, to dispel any reproach of burden shifting and increase STC schemes' chances of success, the EU will need to show solidarity through burden sharing, for instance by offering resettlement quotas.

## MAIN REFERENCES

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Thym, D., [Expert Opinion on Legal Requirements for Safe Third Countries in Asylum Law and Practical Implementation Options](#), April 2024.

## ENDNOTES

- <sup>1</sup> As confirmed by the ECJ in Case [C-621/21](#), the views of UNHCR carry particular weight in light of its supervisory responsibility under the Refugee Convention.
- <sup>2</sup> The ECtHR concluded in [Hirsi Jamaa and Others v Italy](#) that Article 3 of the European Convention of Human Rights must be observed whenever state vessels exercise effective control over a person, including on the high seas.
- <sup>3</sup> In Case [C-517/17](#), the ECJ noted that a personal interview must be conducted prior to adopting an inadmissibility decision.
- <sup>4</sup> The European Court of Human Rights established in [Ilias and Ahmed v Hungary](#) that a comprehensive assessment has to be carried out, to ensure there is no risk of the asylum seeker being denied access to the asylum procedure in the third country. Moreover, the applicant must not face expulsion or *refoulement* in a third country, even if that country is an EU Member State or a party to the Convention. In addition, an asylum applicant may not be removed to a third country unless there are sufficient safeguards against *refoulement*.

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